IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

Bail Appl..No. 5245 of 2007()

CRIME NO,. 359/02 OF MANGALAPURAM P.S.
C.P. 96/03 - L.P. 5/2005 OF JFCM COURT-II, ATTINGAL

PETITIONR/ACCUSED NO.3

VINOD @ VINOD KUMAR,
S/O SURENDRAN NAIR, DHANYA BHAVAN,
NEAR CHANDAVILA C.S.I. CHURCH, THUTHIYARAMOOLA
WARD, THIRUVANANTHAPURAM.

BY ADV. SRI.P.K.MUHAMMED

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
CIRCLE INSPECTOR OF POLICE,
KAZHAKKUTTAM, THROUGH PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

B.A.No. 5245 of 2007

- -

Dated this the 6th day of September, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations, inter alia, under Section 304 I.P.C. The petitioner was enlarged on bail at the crime stage. Investigation is complete and final report has already been filed. The petitioner was not available before the committal court. The co-accused have already been committed and the case against them is pending before the Sessions Court as S.C.460 of 2004. The case against the petitioner was split up and is continuing as C.P.96 of 2003 before the learned Magistrate. That case has since been transferred to the list of long pending cases also. Coercive process have been issued against the petitioner. The petitioner finds a warrant of arrest issued by the learned Magistrate chasing him. He is the third accused.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence was not wilful, but was due to reasons beyond his control. He had no knowledge of the commencement of the proceedings after the filing of the final report.

The petitioner is willing to appear before the learned Magistrate, but he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He therefore prays that directions under Section 438 and/or 482 Cr.P.C. may be issued in favour of the petitioner.

3. The learned Prosecutor opposes the application. He submits that there are no circumstances to justify the invocation of the powers under Section 438 Cr.P.C. in favour of the petitioner.

4. I find merit in the opposition by the learned Prosecutor. It is trite after the decision in **Bharat Chaudhary** v. **State of Bihar** (AIR 2003 SC 4662) that powers under Section 438 Cr.P.C. can be invoked even in favour of a petitioner, who apprehends arrest in a pending case on the strength of a non-bailable warrant issued by the court. Even that is not by itself sufficient to justify the invocation of the jurisdiction under Section 438 Cr.P.C. I am unable to find any compelling reasons which would justify invocation of the jurisdiction under Section 438 Cr.P.C.

5. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no

reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

tm